

performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions.

(e) *Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.* Each operator shall retest a covered employee to ensure compliance with the provisions of § 199.237, if an operator chooses to permit the employee to perform a covered function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended at 59 FR 62239 and 62246, Dec. 2, 1994; Amdt. 199-19, 66 FR 47119, Sept. 11, 2000]

§ 199.227 Retention of records.

(a) *General requirement.* Each operator shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each operator shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, employee evaluation and referrals, and MIS annual report data shall be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices), and training shall be maintained for a minimum of two years.

(3) *One year.* Records of all test results below 0.02 (as defined in 49 CFR part 40) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained:

(1) Records related to the collection process:

- (i) Collection log books, if used.
- (ii) Calibration documentation for evidential breath testing devices.
- (iii) Documentation of breath alcohol technician training.

(iv) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(v) Documents generated in connection with decisions on post-accident tests.

(vi) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) Records related to test results:

(i) The operator's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this subpart.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this subpart.

(3) Records related to other violations of this subpart.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Record(s) related to the operator's MIS annual testing data.

(6) Records related to education and training:

(i) Materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 199.231.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this subpart complies with the requirements for such training.

§ 199.229 Reporting of alcohol testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual management information system (MIS) report to RSPA of

its alcohol testing results in the form and manner prescribed by the Administrator, by March 15 of each year for the previous calendar year (January 1 through December 31). The Administrator may require by written notice that a small operator (50 or fewer covered employees), not otherwise required to submit annual MIS reports, submit such a report to RSPA.

(b) Each operator that is subject to more than one DOT agency alcohol rule shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number of covered employees. Prior to conducting any alcohol test on a covered employee subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each report, required under this section, shall be submitted to the Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, room 2335, 400 Seventh Street, SW., Washington, DC 20590. RSPA will allow the operator the option of sending the report on the computer disk provided by RSPA. If this option is used, a signature page attesting to the validity of the information on the computer disk must be sent to the address in this section.

(d) Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of §§ 199.215 through 199.223 of this subpart shall be submitted on “RSPA Alcohol Testing MIS Data Collection Form” and include the following informational elements:

- (1) Number of covered employees.
- (2) Number of covered employees subject to testing under the alcohol misuse rule of another operating administration by each agency.
- (3)(i) Number of screening tests by type of test.
- (ii) Number of confirmation tests by type of test.
- (4) Number of confirmation tests indicating an alcohol concentration of

0.02 or greater but less than 0.04, by type of test.

(5) Number of confirmation tests indicating an alcohol concentration of 0.04 or greater, by type of test.

(6) Number of covered employees with a confirmation test indicating an alcohol concentration of 0.04 or greater or who have violations of other alcohol misuse provisions who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in §§ 199.235 and 199.243).

(7) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.

(8) Number of covered employees who were found to have violated other provisions of §§ 199.215 through 199.221, and any action taken in response to the violation.

(9) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.

(10) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(e) Each report with no screening alcohol test results of 0.02, or greater or violations of the alcohol misuse provisions of §§ 199.215 through 199.223 of this subpart shall be submitted on “RSPA Alcohol Testing MIS Data Collection EZ Form” and include the following informational elements. (This “EZ” report may only be submitted if the program results meet these criteria)

- (1) Number of covered employees.
- (2) Number of covered employees subject to testing under the alcohol misuse rule of another operating administration identified by each agency.
- (3) Number of screening tests by type of test.
- (4) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.
- (5) Number of supervisors who have received required training during the

reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(f) A consortium may prepare reports on behalf of individual pipeline operators for purposes of compliance with this reporting requirement. However, the pipeline operator shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199-14, 61 FR 65365, Dec. 12, 1996]

§ 199.231 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained in § 199.227.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the records requested by the employee. Access to a employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each operator shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator.

(d) Each operator shall make available copies of all results for employer alcohol testing conducted under this subpart and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority over the operator. The information shall include name-specific alcohol test results, records, and reports.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, an operator

shall disclose information related to the operator's administration of any post-accident alcohol tests administered following the accident under investigation.

(f) An operator shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

(g) An operator may disclose information without employee consent as provided by DOT Procedures concerning certain legal proceedings.

(h) An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199-19, 66 FR 47119, Sept. 11, 2001]

§ 199.233 Removal from covered function.

Except as provided in §§ 199.239 through 199.243, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§ 199.215 through 199.223 or an alcohol misuse rule of another DOT agency.

§ 199.235 Required evaluation and testing.

No operator shall permit a covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 to perform covered functions unless the employee has met the requirements of § 199.243.

§ 199.237 Other alcohol-related conduct.

(a) No operator shall permit a covered employee tested under the provisions of § 199.225, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until: